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| APPLICATION NO.                                                                                                       | FILING DATE | FIRST NAMED INVENTOR     | ATTORNEY DOCKET NO.        | CONFIRMATION NO.       |
|-----------------------------------------------------------------------------------------------------------------------|-------------|--------------------------|----------------------------|------------------------|
| 10/673,535                                                                                                            | 09/29/2003  | Alan F. Wolfschoon-Pombo | 1410-67166                 | 1849                   |
| 48940 7590 11/13/2007<br>FITCH EVEN TABIN & FLANNERY<br>120 S. LASALLE STREET<br>SUITE 1600<br>CHICAGO, IL 60603-3406 |             |                          | EXAMINER<br>WONG, LESLIE A |                        |
|                                                                                                                       |             |                          | ART UNIT<br>1794           | PAPER NUMBER           |
|                                                                                                                       |             |                          | MAIL DATE<br>11/13/2007    | DELIVERY MODE<br>PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                                |  |
|------------------------------|--------------------------------------|------------------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/673,535 | <b>Applicant(s)</b><br>WOLFSCHOON-POMBO ET AL. |  |
|                              | <b>Examiner</b><br>Leslie Wong       | <b>Art Unit</b><br>1794                        |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on September 4, 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2, 4 and 6-15 is/are allowed.
- 6) ☒ Claim(s) 3, 16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

Claims 1, 2, 4, and 6-15 are allowed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Pelt et al (GB 1440182) in view of Soeds (EP 0966887) for the reasons set forth in rejecting the claims in the last office action. The amendments to the claims are not seen to influence the conclusion of unpatentability previously set forth.

Van Pelt et al (GB 1440182) disclose a whey protein stabilized emulsion (see entire document, especially the Examples and claims 1 and 6).

The claims differ as to the use of transglutaminase and the foodstuff base.

Soeds (EP 0966887) discloses a stabilized transglutaminase treated whey protein where the modified protein is used in gel-like foods, such as meat products, and emulsified dairy foods (see entire document, especially paragraphs 0038, 0039, 0040, and 0059 and claims 1, 18, and 19).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use transglutaminase as taught by Soeds in that of Van Pelt et al because the use of transglutaminase serves to stabilize whey protein.

Once the art has recognized the use of stabilized whey proteins in the art, the use and manipulation in different food products and conditions is no more than conventional in the art.

Applicant's arguments filed September 4, 2007 have been fully considered but they are not persuasive.

Applicant argues that Van Pelt et al do not teach the claimed acidification or heat treatment.

Van Pelt et al (GB 1440182) disclose a whey protein stabilized emulsion for use in foods (see entire document, especially the Examples and claims 1 and 6). Once the art has recognized the use of stabilized whey proteins in the art, the use and manipulation in different food products and conditions is no more than conventional in the art. Claims 3, 16, 18, and 19 are product claims not process claims. The prior art teaches a whey protein stabilized emulsion as is claimed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

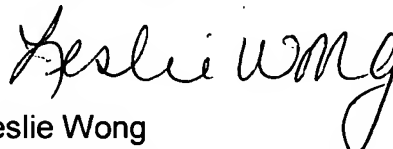
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Leslie Wong  
Primary Examiner  
Art Unit 1794

LAW  
November 8, 2007